IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 18 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ABHA ARVINDBHAI TRUST

Appearance:

1. INCOME TAX REFERENCE No. 18 of 1992
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following question for the opinion of this Court at the instance of the revenue :-

> "Whether, the Appellate Tribunal is right in law and on facts in directing to exclude the capital gain from the income of the beneficiary of the assessee trust and to tax the same in the hands of the assessee trust ?"

2. The assessment year is 1980-81. The assessee is a private trust having only one beneficiary. During the year, certain assets forming part of the corpus of the trust were transferred by the assessee trust and capital gains arose as a result of such transfer. The case of the assessee trust was that such capital gains were liable to be assessed in the hands of the assessee trust itself and not in the hands of the sole beneficiary. The Income-tax Officer held that the capital gains constituted income of the trust for the benefit of the sole beneficiary and hence, the capital gains were also liable to be assessed in the hands of the sole beneficiary. The Appellate Assistant Commissioner and the Tribunal following the decision of this Court in Kum. Pallavi Mayor vs CIT, (1981) 237 ITR 701 held that the capital gains had to be taxed in the hands of the assessee trust and not in the hands of the beneficiary.

3. Mr Mihir Joshi appears on behalf of the applicant-revenue. Though served, none appears on behalf of the respondent-assessee. At the time of hearing of the reference, our attention was drawn to the fact that this reference is filed by the revenue only because the department had filed SLP against the decision of this Court in case of Kum. Pallavi Mayor. Nothing has been pointed out to us to take a different view from the aforesaid decision of this Court. The question referred is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-